

**U.S. ENVIRONMENTAL PROTECTION AGENCY**  
**CAFO PUBLIC MEETING—CHATTANOOGA, TENNESSEE**  
**MARCH 22, 2001, 1:00 to 5:00 PM**

On December 15, 2000, former U.S. Environmental Protection Agency (EPA) Administrator Carol Browner signed proposed revisions to the National Pollutant Discharge Elimination System (NPDES) Permit Regulations and the Effluent Limitation Guidelines and Standards (ELG) for Concentrated Animal Feeding Operations (CAFOs). The proposed revisions revise and update the two regulations that address impacts on water quality from manure and process waters generated by CAFOs. EPA published these proposed revisions in the *Federal Register* on January 12, 2001, at 66 FR 2959.

EPA held eight public information meetings in different cities across the country. The purpose of these meetings was to enhance public understanding of the proposed changes to regulations for CAFOs. At each meeting, EPA presented an overview of the proposed regulations and responded to questions and requests for clarification from attendees.

These informational meetings were not part of the public comment process. Any comments that citizens or groups wish EPA to consider as part of the rulemaking process must be submitted in accordance with the requirements specified in preamble to the proposed rule. The public comment period extends until July 30, 2001. In Chattanooga, Mike Cook and Gregory Beatty from the Office of Wastewater Management and Paul Shriner from the Office of Science and Technology, presented the overview of the proposed CAFO rule revisions.

The summary below is an overview of statements made by the public participants at the informational meeting. These notes are not intended to be a verbatim transcript or a comprehensive record of the meeting; rather, they are intended to identify the participants at this meeting, the issues of concern, and the general nature of the questions asked and the answers provided. The summary is organized by order of questioner.

**MEETING SUMMARY**

**Presenters:** Mike Cook, Director, Office of Wastewater Management, USEPA;  
Gregory Beatty, Office of Wastewater Management, USEPA; Paul Shriner, Office of Science and Technology, USEPA

**Moderator:** Roosevelt Childress, USEPA Region 4

**Panelists:** Mike Cook, Gregory Beatty, Paul Shriner

**Approximate number of public attending:** 100

**Attendees:** Meeting attendees were predominantly beef producers. Significant numbers of attendees were representing the Tennessee Farm Bureau and the Tennessee Cattleman's Association. There was some representation from dairy and poultry producers and a few swine producers were identified. Also, in attendance were a number of USDA Cooperative Extension personnel and university staff primarily from the University of Georgia and the University of Tennessee. Attendees from Georgia and Tennessee accounted for approximately 75 percent of the participants, with limited representation from Alabama, Indiana, Kentucky, Mississippi, North Carolina, South Carolina, and Virginia.

**Meeting Opened:** 1:05 PM

**Questioning Began:** 1:30 PM

**Meeting Adjourned:** 5:05 PM

**SUMMARY OF QUESTIONS AND ANSWERS**  
(By order of questioner)

*The following are notes of this proceeding. EPA does not have a verbatim transcript of the proceeding.*

**1. Don Kelly, poultry farmer**

**Q:** I only found out about the meeting several days ago; how did EPA get the information about the meeting out to producers? How would a family farmer find out?

**A:** A *Federal Register* announcement was published and notification was provided to industry associations. EPA used the available methods and organizations to provide notice of the meeting.

**2. Beth Kelly, poultry farmer**

**Q:** Please explain what is an Animal Unit (AU)? I have two houses that hold 45,000 birds, and I turn them six times a year; how many animal units do I have?

**A:** There are two AU conventions, one by U.S. Department of Agriculture (USDA) and one by EPA; they are very similar, but there are differences. The AU represents your capacity at a single point in time; in your case, you would have 450 AU.

**Q:** We have four houses; two houses are in my name and two are in my husband's. Are they considered one operation under the proposed regulation?

**A:** If they are on contiguous properties they are one operation.

**Q:** Where are the certified planners to prepare the plans?

**A:** EPA is in the process of building this capacity. USDA is developing guidance and the USDA Natural Resource Conservation Service (NRCS) will play an important role in working with the farmer to develop plans.

**Q:** How long do the plans need to be maintained and updated?

**A:** The proposed rule is intended to allow flexibility. Major changes to the plan are to be reported to the permitting authority. A certified planner will review and update the plan every five years.

**Q:** Off-site certification: how long do we need to hold this information and who will develop the brochure mentioned in the proposed rule?

**A:** The brochure will be prepared by the permitting authority. The records would need to be maintained for each manure application

**3. Charles Goan, University of Tennessee**

**Q:** Have you established the number of poultry operations that would be a CAFO based on twelve tons of manure being sent off-farm?

**A:** The twelve tons is only a condition for operations with 300 to 1,000 AU under the proposed three-tier structure. EPA has assumed that most poultry operations would be regulated as a result of this condition.

**Q:** Why is a veal calf equal to a mature cow, and why is EPA adding this category?

**A:** EPA is only establishing a new performance standard for veal; EPA is not making any changes to the definitions in the existing regulation.

**Q:** Will existing lagoons need to be lined?

**A:** Only those where a direct hydrologic connection with surface water has been identified.

**Q:** Have you done an estimated annual cost for the regulation?

**A:** Yes EPA has; it is up to \$900 million for all sectors, depending on the options selected.

#### **4. Clairson DeBerry, dairy farmer**

**Q:** Can you apply commercial fertilizer in the setback area?

**A:** Yes.

#### **5. Hugh Savoy, University of Tennessee**

**Q:** What is the assurance to the producer that the Permit Nutrient Plan (PNP) is preventing a discharge?

**A:** If he is applying manure in accordance with a PNP, then the agricultural stormwater exemption applies and there is no unpermitted discharge.

#### **6. Glen Conatser, University of Tennessee**

**Q:** How many discharge violations have there been over the past few years? Compare this to municipal dischargers?

**A:** The rate for major municipal dischargers is about 10 percent. EPA does not know the number for CAFOs. EPA knows that 10,00 to 12,000 operations should be permitted under the current regulation, but only about a third actually have permits.

**Q:** Is the National Pork Producers On Farm Assessment Program part of the voluntary or regulatory program.

**A:** They do not want any part of the regulatory program.

#### **7. Marvin Powell, farmer**

**Q:** How are calves counted at a small dairy?

**A:** You count only the mature milking herd.

**Q:** What about beef on a pasture, are they a CAFO?

**A:** They would not be a CAFO.

#### **8. Chester Bush, NRCS Tennessee**

**Q:** Why is the 25-year, 24-hour storm exemption being eliminated?

**A:** Under the current regulation the exemption is not being used properly and is causing confusion.

**Q:** Is EPA considering going to a higher rainfall intensity?

**A:** Not at this time.

### **9. Tim Dean, Georgia Cattleman's Association**

**Q:** If I send a truckload of cows to a facility that I still own do I need a permit?

**A:** The concept of co-permitting only applies to those situations where there is significant operational control. EPA needs your assistance to help us define when co-permitting is required.

[Mr. Dean did not raise any other specific question during the time he spoke, but he did provide some comments including the need to factor in geographic differences, the opinion that the current description of SOC makes no sense, and the need to focus on better implementation of existing regulations, and he questioned the accuracy of EPA's economic analysis.]

### **10. Larry Upchurch, farmer**

**Q:** How do we certify that we are not a CAFO under the proposed regulations?

**A:** The proposed regulation contains the conditions that the permitting authority will certify.

**Q:** Define *certified nutrient management planner*. Can an individual become certified?

**A:** USDA is working on this, and yes, an individual can become certified.

**Q:** Who enforces at the local level?

**A:** The permitting authority.

**Q:** Is anything being addressed concerning additional cost share funding?

**A:** There are programs for non-CAFOs in place now, including EPA's State Revolving Fund (SRF) and USDA's Environmental Quality Incentives Program (EQIP). Once an operation is a CAFO, the funds available become limited. EPA is discussing possible changes.

### **11. Forbes Walker, University of Tennessee**

**Q:** In lieu of either a two-tier or three-tier approach, what do I tell farmers who may or may not be impacted by the rule but who want to be prepared?

**A:** The requirements are the same for either approach.

**Q:** Are fertilizer applications allowable on the surface water setback?

**A:** Yes, but EPA asks for suggestions of appropriate practices and technologies on this issue.

### **12. George Smith, University of Tennessee**

**Q:** Is this an individual or general permit?

**A:** At this time, EPA is looking at using mostly general permits because of the potential number of facilities.

**13. George Hayes, Farm Bureau**

**Q:** Where do I stand with 20,000 hens?

**A:** You would be part of the voluntary program.

**Q:** Is the spreading of litter in the winter near an intermittent waterway with no water present allowed?

**A:** Yes

**14. Sam Payne, Farm Bureau**

**Q:** What is a stand-alone heifer operation?

**A:** It is a separate nursery that raises heifers. EPA is clarifying that a heifer-only operation falls within the scope of the regulation.

**Q:** Is the bad actor provision in the proposed regulation?

**A:** The term *bad actor* was used in the introductory remarks and is not in the regulation. Bad actors would be subject to an enforcement action by the permitting authority.

**Q:** If I buy chicken litter from a CAFO, do I need a PNP?

**A:** That is currently one of the options under consideration in the proposed regulation. EPA seeks your comment.

**15. Tony Pescatore, University of Kentucky**

**Q:** What went into developing the cost estimate?

**A:** The technical development document provides an item-by-item breakout for costs that were included.

**Q:** How many designated operations were included in the cost estimate?

**A:** EPA included costs for operations that are designated as CAFOs. The number was limited based upon the historically low use of this provision.

**Q:** What problem are you trying to solve with co-permitting?

**A:** EPA is trying to address a vertically integrated industry.

**Q:** What percentage of counties have an excess of manure being generated?

**A:** There are approximately 170 counties, as estimated by USDA.

**Q:** Given that, why are you applying this requirement to all of the states?

**A:** EPA is accepting comments on a number of possible approaches.

**16. Jim Loftis, Southern States, Inc**

**Q:** What kind of data do you have that implicate AFOs as polluters?

**A:** EPA has information on a number of specific spills and local impairments. A number of state impaired waters reports identified one source of water pollution as animal agriculture.

**Q:** Is the Phosphorus Index to be the standard across the country?

**A:** The Phosphorus Index is one of three approaches identified in the rule. Each state determines the appropriate method.

#### **17. Betts Barry, Georgia Cattleman's Association**

**Q:** How is the liability of the applier determined?

**A:** If you apply in accordance with a PNP, you are in compliance.

**Q:** What about penned calf weaning areas in a pasture; would they be considered a CAFO?

**A:** The rule needs work, and EPA needs your input to resolve issues such as these. If all of the vegetation is killed, a lot of pollutants would enter surface water.

#### **18. John Mitchell, University of Georgia Extension**

**Q:** Where can I get a copy of the court order? Can you put it on your web site?

**A:** EPA can get a copy to you. EPA will check to see if the consent decree can be posted to the EPA web site.

**Q:** When can I get a copy of the narrative of today's presentation?

**A:** It will be posted to the EPA web site in the near future.

**Q:** The rule says that the permit remains in effect until proper closure. How does this apply to poultry?

**A:** It would address the proper closure of all sheds and litter storage areas.

**Q:** Are closure costs included in the cost estimate?

**A:** Yes

**Q:** Who is the third party in an Environmental Management System (EMS) under co-permitting?

**A:** Independent auditors.

#### **19. Mary Asbill, Southern Environmental Law Center**

**Q:** Did EPA consider phasing out lagoons?

**A:** EPA does not have the legal authority to ban or prescribe a specific technology.

**Q:** Do the proposed rules allow public input to a general or individual permit?

**A:** The individual permit does allow a public comment period. For general permits the permitting authority would publish a quarterly list of the requesters for coverage.

**Q:** Why is groundwater monitoring not required for all operations?

**A:** The economic achievability analysis is conducted by sector, and the requirements take this into account.

**20. Rick Jaspers, University of Georgia Extension**

**Q:** What is the impact of the rule on NRCS funding and costs?

**A:** EPA is concerned that USDA receive the necessary funding to support their role in implementing the proposed rule.

**Q:** What controls are under consideration for pathogens?

**A:** Treatment for pathogens can be expensive. EPA is trying to collect information and other data.

**Q:** What are the data showing dry litter as a pathogen source?

**A:** EPA has case histories and anecdotal evidence on dry litter as a pathogen source. EPA also has information about some emerging technologies.

**21. Steve Moraitoks, University of Georgia Extension**

**Q:** Does the 100-foot setback include drainage ditches, sinkholes, and limestone valleys?

**A:** The 100-foot setback applies to waters of the United States. Most ditches are not considered waters of the United States, but this is a gray area. Sinkholes need to have a hydrologic connection to surface water in order for the 100-foot setback to apply.

**22. John Starkey, U.S. Poultry**

**Q:** How much homework have you done concerning the development of the original ELG? The poultry industry has not changed since then.

**A:** The existing ELG refers to a watering technology that was a common technology then but is no longer utilized.

**Q:** You say that five percent of operations will be covered, but our information says that 75 percent have more than 30,000 birds. What is the basis of your five to seven percent estimate?

**A:** The data come from the 1997 USDA Agricultural Census. If you have better data, please submit them to EPA.

**Q:** Why not a public hearing to facilitate comment? More would have attended.

**A:** [No answer.]

**23. Bill Segas, University of Georgia**

**Q:** Why should producers worry about new CAFO regulations when there are a number of unpermitted facilities under the existing regulation?

**A:** There is more public attention being focused on these facilities than in the past.

**Q:** Are they going to be permitted?

**A:** Yes.

**Q:** For newly defined CAFOs, the deadline in the proposed rule is 2006. Is dry litter newly defined?

**A:** Yes.

**24. Roby Murray, Georgia Farm Bureau**

**Q:** Is the money available to enforce these regulations?

**A:** The estimate for state costs under this rule are \$6 to \$8 million per year. Total state costs for the NPDES program are \$700 million a year, so this is an incremental increase.

**Q:** What is the cost to producers?

**A:** The cost to producers is \$180 to \$900 million a year, depending on the options selected.

**Q:** What impact will the cost of a PNP have for the recipient of manure? Will it drive them to use commercial fertilizer?

**A:** EPA is trying to work this out. There is an imbalance between food production being shipped out of an area without the associated manure being shipped out.

**Q:** How do we get the integrator involved to assume these costs?

**A:** EPA believes that uniform requirements across the country (co-permitting) will make this happen.

**Q:** How many producers attended the meeting held by EPA in Mississippi?

**A:** Approximately a quarter were producers.

**25. Jimmy Hale, dairy farmer**

**Q:** Can a drinking water well under a state permit program serve as a test well under this regulation for determining hydrologic connection?

**A:** Please provide the information you have on this issue. EPA needs to consider this information.

**26. Dave Fugate, beef farmer**

**Q:** What does it cost to get an NPDES permit?

**A:** There is no cost to the producer for the permit, but the potential cost to meet permit conditions is no more than \$900 million.

**Q:** If I use biosolids, do I need a permit?

**A:** EPA has requirements that apply with or without a permit.

**27. R.A. Dougherty, Tennessee Cattleman's Association**

**Q:** I have a backgrounding cattle operation in Tennessee and a feeding operation in Kansas. What is the impact of co-permitting to the cattle industry for someone in my situation?

**A:** EPA does not intend for co-permitting to be used in these situations.

**Q:** Can an AFO be designated based on public complaints of odor?

**A:** To be designated, the operation must be a significant contributor of pollutants to waters of the United States. Odor would not result in your being designated under this proposed rule.

**Q:** Will the proposed rule cover supplemental feeding operations that are mostly pasture?

**A:** This is not a practice that EPA intends to cover under the regulation.

**28. Chester Lowder, North Carolina Farm Bureau**

**Q:** Do you intend to cover all operations with state permits in North Carolina?

**A:** EPA will require only those operations that meet EPA's requirements to get an NPDES permit.

**Q:** If we go to a phosphorus-based approach, would it require a rewrite of all the plans in place in North Carolina that are nitrogen-based?

**A:** Yes, your plans would have to be rewritten. EPA has assumed this as a cost in the economic analysis.

**Q:** How did you arrive at the 100-foot setback?

**A:** EPA arrived at the 100 foot setback based on a survey of existing state programs. EPA is seeking comment on alternative approaches.

**29. Dean Ross, North Carolina dairyman**

**Q:** Has there been a state-by-state analysis of PNP costs?

**A:** No, but EPA did try to account for regional variations in the cost of developing a PNP.

**Q:** Would the permits issued by North Carolina be considered adequate?

**A:** Yes, but they must meet NPDES requirements, including public participation and federal enforceability.

**30. Daryl Fullam, North Carolina dairyman**

**Q:** Why do CAFOs have to meet the zero discharge requirement when municipal treatment plants are allowed to discharge?

**A:** The zero discharge requirement is only for the feedlot area. If manure is applied in accordance with a PNP, there could be a permitted discharge from the land application areas.

**Q:** If monitoring wells are required, will they not be a point source during a flood?

**A:** Monitoring wells apply only to the feedlot. EPA is only aware of one situation where this has occurred.

**31. Stephan Maupin, Tennessee Farm Bureau**

**Q:** Where is the authority to regulate land application under the Clean Water Act (CWA)?

**A:** The authority is from the definition of a point source—where there is a direct conveyance. It is possible for you to make the case that you will never discharge, but this is difficult to do with land application. If you can make the case, you do not need a permit.

**Q:** Is designation based on actual or potential discharge?

**A:** Actual.

**Q:** Where does the Total Maximum Daily Load (TMDL) rule fit? Can I be designated if I do not discharge and I am in an impaired watershed?

**A:** The TMDL program is an ongoing program under existing rules. The proposed rule makes minor changes with respect to CAFOs. The TMDL requires the determination of pollutants that are causing problems and assigns sources a loading reduction. If a source is not contributing, no reduction would be required.

**32. Joe Pearson, Tennessee Farm Bureau**

**Q:** Is USDA involved in the development of the rule and these meetings?

**A:** EPA and USDA are working together.

**33. Marty Davis, dairy farmer**

**Q:** How many more streams are impaired by sewage and household wastes than by agriculture?

**A:** Only 32 percent of the nation's waters have been surveyed. EPA is unable to determine the relative impacts of independent sources of pollution.

**Q:** You say that the public is very interested, but where are they at this meeting?

**A:** EPA has information concerning the public's interest in this issue. EPA also has anecdotal evidence that the general public would be willing to pay 1 cent more a pound for meat to pay for proper manure management.

**Q:** At what point will surface application of manure no longer be allowed?

**A:** There is no one number, it is a site-specific determination.

**34. Flanda Barker, Tennessee Farm Bureau**

**Q:** Can EPA use the current dairy program inspectors to ensure compliance?

**A:** There is a pilot program in Idaho to do just this. The state would need to decide if this is the approach they want to take.

**Q:** Why is USDA not here?

**A:** USDA has been involved in developing the regulation and providing data. They will promote proper management under voluntary programs, but they do not want to be in the regulatory business and they have left the design of the regulation up to EPA. They will provide input to crafting the final regulation.

**Q:** Will comments at these meetings impact the outcome?

**A:** Yes, but your comments must be formally submitted to the agency by one of the methods identified in the proposed rule.

**35. H. McClary, Farmer (broiler/contract heifer operation)**

**Q:** I rent a farm with 50,000 birds. Who is responsible for developing the PNP, me or the owner?

**A:** A PNP needs to be developed, and in these situations it would require a case-by-case determination as to who holds the permit.

**Q:** Who grants flexibility in case-by-case determination?

**A:** The state.

**36. Wayne Cummins, Alabama Sound Mountain CC**

**Q:** How do you get the integrator to pay their share? Is co-permitting an approach EPA is going to take.

**A:** Yes, it is proposed approach that had been included in the proposed rule.

**37. Edwin Jones, farmer**

**Q:** Who determines that the operator is applying at the proper rate?

**A:** The permitting authority.

**Q:** When can liquid manure be applied?

**A:** The regulation does not explicitly address this, but the PNP should address this.

**38. Bob Garner, dairy farmer**

**Q:** How can you ever have a final rule when things are changing so fast?

**A:** This is often a challenge in developing regulations. EPA sets performance outcomes and people best determine how to meet those outcomes.

**39. Peggy Griffin, Alabama Sierra Club**

**Q:** What is EPA doing to address the use of antibiotics?

**A:** EPA is collecting data and information.

**Q:** What about air emissions?

**A:** The CWA does not address this. As EPA develops the ELG, to the extent possible EPA seeks ways to reduce impacts.

**40. John Moor, farmer**

**Q:** Have you tested the waters so you can measure improvement? Will we get our money back if the water quality does not improve after this regulation?

**A:** Yes, EPA wants a baseline. There would be no refunds after proper implementation.

**41. Chips Everhart, Rose Acre Farms**

**Q:** How have you taken into account the impact of a 5-year term as a potential limiter to the ability of an operation to obtain loans from a bank?

**A:** The permit remains in effect until it is renewed. The 5-year term should not be an issue with respect to securing a loan.

**Q:** Are aquifers considered waters of the United States?

**A:** No.